

**Testimony Before the Tom Lantos Human Rights Commission
on Judicial Independence in Central America**

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June 9, 2021

I. Introduction

Thank you for the opportunity to be here today to discuss attacks on judicial independence in Central America. The President of the American Bar Association (ABA) has expressed concern about [attacks](#) on independent justice sector personnel and [irregularities](#) in proceedings to select new [high court judges](#) in Guatemala. She has also expressed [concern](#) about the recent dismissal of members of the Supreme Court of El Salvador. Today, I will discuss in more detail how these attacks have been undertaken, why they are significant, and what can be done about them.

II. About the ABA

Before I turn to recent events in the region, let me briefly outline the nature of our experience in Central America. The ABA promotes the rule of law at home and around the world. It has provided technical assistance to judges, prosecutors, law schools, bar associations, and civil society in over 100 countries through its Rule of Law Initiative and Center for Human Rights. For the last ten years, the ABA has provided technical assistance to justice sector personnel in Honduras, Guatemala, and El Salvador. It has also monitored corruption in judicial proceedings in the region, documenting irregularities in processes to select high court judges and in pending anti-corruption cases in national courts. It regularly provides pro bono assistance to justice sector personnel, civil society leaders, and journalists facing reprisals for their work.

III. The Problem

On the basis of this experience, we are deeply concerned that the justice sector in each of these countries has been compromised by illicit networks or political interference. I will focus my remarks on Guatemala, where we have closely tracked attacks on judges for years but note that we have documented similar trends in Honduras and El Salvador.

While state capture is a long-standing problem in post conflict settings in the region, until recently, Guatemala had stood out as an example of successful efforts to challenge kleptocratic governance. Unfortunately, those efforts—which were spearheaded by brave judges in the high-risk courts and prosecutors in the anti-impunity office—have now largely stalled as a result of the premature removal of the internationally backed anti-impunity commission (known by the Spanish acronym, CICIG). After the termination of CICIG, many anticorruption cases have stalled within the Prosecutor General’s office and the courts. Meanwhile, attacks on prosecutors and judges handling anticorruption cases, as well as civil society, have surged. This appears to be a well-coordinated, well-resourced campaign by illicit networks facing criminal allegations to stamp out independence in the prosecutor’s office and the courts in an apparent effort to secure impunity for past crimes.

This campaign has two prongs. First, to capture the high courts by controlling the processes for selecting and removing judges. Second, to impede the work of independent judges through threats and obstruction of justice.

a. Judicial selection

With regards to influence peddling in judicial selection proceedings, in all three countries, the Center documented [irregularities](#) in the proceedings that called into question whether the candidates were selected on the basis of their merits. The American Convention on Human Rights requires that all such selection proceedings be objective, reasonable, nondiscriminatory, and transparent. Nonetheless, the relevant nominating bodies refused to embrace basic good practices, such as requiring the candidates to disclose their past judicial decisions or investigating the financial holdings of the candidates to detect unexplained income.

As a result of the failure to conduct meaningful vetting, candidates with a demonstrated record of independence have been excluded from seats on the high courts and judges who are the subject of credible allegations of unethical or illegal activity have been promoted. There are also pending criminal investigations of bribery in the judicial selection proceedings in Guatemala that until recently were inexplicably delayed. Once seated, judges with questionable track records have blocked pending corruption prosecutions against those who supported their nominations.

Illicit networks also manipulate disciplinary proceedings to remove legitimate judges from the bench. While the recent replacement of the judges of constitutional chamber of the Supreme Court of El Salvador may have been a more brazen attack on judicial independence than the ongoing efforts to stack the high courts in Guatemala, the effect is the same: the loss of a critical pillar of democratic governance, an independent judiciary capable of serving as check on governmental corruption and abuse of power.

b. Threats

In addition to bribery and influence-peddling in the selection and removal of judges, there has been a coordinated, well-resourced campaign of disinformation and threats against justice sector personnel. In Guatemala, local civil society organizations have documented over 100 frivolous criminal and disciplinary complaints against judges and prosecutors. This is accompanied by a sophisticated disinformation campaign aimed at tarnishing their recommendations and intimidating them, including through the use of coded threats and online bots. As a result of this kind of pressure, judges and prosecutors have been forced to flee the country.

In Honduras, the Inter-American Court of Human Rights has held that Supreme Court judges were wrongfully dismissed, and there are widespread reports of failure by the government to investigate the killing of judges. In such an environment, it is extremely difficult for individuals with integrity to secure and retain a seat on the bench. Increasingly, they do not even try.

IV. Impact

The impact of this assault on judicial independence is widespread and profound. High-level anti-corruption and human rights cases falter in the courts, reinforcing the existing climate of impunity. Attacks on journalists, attorneys, and civil society—that are already pronounced—are expanding. After a selection process characterized by significant irregularities, the newly appointed Constitutional Court of Guatemala

recently threw out several high-profile corruption cases without permitting a full investigation of the facts and upheld a law that gives the government unfettered discretion to shutdown nongovernmental organizations. After years of progress, there is a real danger that, within the next few months, there will be no remaining pockets of independence anywhere in the justice sector.

Corruption undermines the realization of human rights not just through undermining access to legal remedies but also by compromising the capacity of other governmental bodies to fulfill their functions. For example, [corruption](#) in the mining ministry in Guatemala appears to have led to the granting of licenses to companies that [failed](#) to undertake necessary steps to prevent environmental contamination or labor violations. The failure of these officials and companies to comply with relevant legal obligations has led to court disputes which deter further investment and undermine economic growth. Corruption has also compromised the security sector in Guatemala, where there are credible allegations that defense officials [embezzled](#) millions of dollars and Ministry of Interior officials dismissed hundreds of police who had undergone rigorous vetting. These broader threats to the integrity of the security sector have undermined Guatemala's ability to combat narcotics trafficking and undermined public confidence in the security sector.

V. The Solution

I will now outline my recommendations for addressing these issues. Before I begin, let me state that, while the ABA has repeatedly expressed concern about these issues, it is evaluating but has not yet adopted policy recommendations specifically on this question. In the interim, I offer the following personal views which are my own and should not be construed as representing ABA policy.

While the situation is grim, there remains a significant opportunity to turn things around. Recognizing that high-level corruption undermines the basic functions of government and is widely believed to be a major driver of irregular migration, the Biden administration has rightly prioritized the fight against corruption in the region.

I therefore welcomed the news on Monday that the administration is creating an inter-agency task force. A task force with significant investigative capacity could support local justice sector personnel, prioritize investigations of individuals and assets in the United States involved in corruption in the region, and develop better intelligence on individuals who have captured the judiciary in order to evade accountability for past crimes.

With a concerted, inter-agency effort, the United States could greatly assist local justice sector personnel and other anticorruption bodies in dismantling illicit networks. In particular, there is a clear need for greater attention by U.S. law enforcement to transnational aspects of corruption in the region. Both the Department of Justice and the Federal Bureau of Investigation have kleptocracy initiatives that have successfully tracked down assets derived from government corruption in other countries. Their expertise would be a useful component of the inter-agency strategy, as there is evidence that individuals engaged in corruption in these countries, including those involved in attacks on judicial independence, have assets in the United States or are otherwise subject to the extraterritorial jurisdiction in the United States.

However, there is a limited window of opportunity to act, as local justice sector personnel and civil society are under attack and evidence derived from internationally backed anti-impunity initiatives will go stale if not acted upon now. While the State Department has invoked its authority to deny visas to individuals credibly alleged to be involved in corrupt activities, these have not had any apparent deterrent effect to

date, perhaps because they have largely focused on lower-level operators rather than the financiers of these illicit networks.

To protect pockets of independence in the justice sector, the United States should consider a range of options, including to:

1. Impose sanctions on those engaged in a pattern of threatening activity against justice sector personnel. Apply common tactics used against organized crime in the United States.
2. Set red lines to make clear that if threats against justice sector personnel security and civil society are not investigated, security assistance will be curtailed.
3. Restructure development assistance to ensure that it does not benefit corrupt actors. Review International Financial Institution loans to confirm that proper due diligence was conducted to ensure compliance with existing “know your customer” requirements and to revise those requirements if they are found to be insufficient to prevent financing for actors credibly alleged to be involved in criminal activity.
4. Establish a formal “Group of Friends” to ensure consistent international support for at-risk justice sector personnel.
5. Provide technical assistance to support:
 - i. Local civil society efforts to monitor upcoming proceedings to select new judges and prosecutors.
 - ii. Long-term efforts to improve professionalism should also be considered.

VI. Conclusion

Through a concerted inter-agency strategy, the United States could help turn things around in the region. While the trajectory is currently downward, there is cause for hope. Internationally backed anti-corruption initiatives in the region enjoyed overwhelming popular support, and there is a cadre of prosecutors, investigators, attorneys, and journalists with the skills and the will to tackle the issue if the international community can help create space for them to operate.